

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DWIGHT MARQUEZ KELLOGG,)
)
Plaintiff,)
)
v.)
)
DOUGLAS COUNTY,)
)
Defendant.)
_____)

8:18CV197

**MEMORANDUM
AND ORDER**

This matter is before the court for case management. The Prison Litigation Reform Act requires an imprisoned civil plaintiff to pay the court's entire filing fee, either at the outset when filing the complaint, or in installments if the court grants leave to proceed in forma pauperis ("IFP"). [*In re Tyler*, 110 F.3d 528, 529-30 \(8th Cir. 1997\)](#); [*Jackson v. N.P. Dodge Realty Co.*, 173 F. Supp. 2d 951 \(D. Neb. 2001\)](#).

On May 7, 2018, the court granted Plaintiff's motion seeking leave to proceed IFP and ordered him to pay an initial partial filing fee in the amount of \$34.89 within 30 days. (See Filing No. [6](#).) To date, Plaintiff has not paid the initial partial filing fee or asked for an extension of time in which to do so. Accordingly, the court will require Plaintiff to show cause why this case should not be dismissed for his failure to pay the initial partial filing fee.

If Plaintiff's failure to pay by the court's deadline was caused by prison officials' failure to adhere to his request¹ to remit payment using funds from his account, his failure to pay within the time ordered by the court will be excused.

¹Plaintiff has filed a copy of a Douglas County Department of Corrections Personal Property Release Form (Filing No. [9](#)) and a "Motion To Issue Warrant for Record Supervisor Joshua Rangel arrest Case Number: 8:18CV197" (Filing No. [10](#)), both of which request that his institution send \$34.89 to the Clerk of the United States District Court in Case Number 8:18CV197. (Filing No. [10](#).)

However, if Plaintiff's failure to pay by the court's deadline was caused by his failure to leave sufficient funds in his account to timely pay the initial partial filing fee, his failure to pay will not be excused. Absent a sufficient response, the case will be subject to dismissal. See [*Taylor v. Cassady*, 570 Fed. App'x 632 \(8th Cir. 2014\)](#) (unpublished) (holding district court abused its discretion by dismissing case without first taking steps to determine whether prisoner-plaintiff's failure to pay the initial partial filing fee "was caused by circumstances beyond his control, such as prison officials' failure to adhere to his request to remit payment using funds from his account").

IT IS ORDERED:

1. Plaintiff will have 30 days to show cause why this case should not be dismissed for failure to pay the initial partial filing fee. In the absence of cause shown, this case will be dismissed without prejudice and without further notice.

2. The Clerk of the Court is directed to set a pro se case management deadline in this case using the following text: July 20, 2018—check for response to show cause order.

3. To the extent Plaintiff has properly requested that the Douglas County Department of Corrections send \$34.89 from his institutional account to the Clerk of the District Court for the District of Nebraska in Case Number 8:18CV197, the Douglas County Department of Corrections shall do so promptly. (See Filing No. [9](#) & Filing No. [10](#).)

4. Plaintiff's "Motion To Issue Warrant for Record Supervisor Joshua Rangel arrest Case Number: 8:18CV197" (Filing No. [10](#)), construed as a Motion to Require Douglas County Department of Corrections to Pay Filing Fee, is granted as provided in paragraph (3).

5. The Clerk of the Court shall send a copy of this Memorandum and Order to the Douglas County Department of Corrections, Office of Inmate Accounts, 710 South 17th Street, Omaha, NE 68102.

DATED this 19th day of June, 2018.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge